IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

OP.No. 13338 of 1998(K)

PETITIONER:

K.DEVADASAN, S/O.THAMU,
AGED 45 YEARS, KALAKKANDATHIL HOUSE,
P.O.EDAKKARA,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GENERAL EDUCATION DEPARTMENT,
GOVT. OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM, MALAPPURAM DISTRICT.

4. ASSISTANT EDUCATIONAL OFFICER,
NILAMBOOR.

BY SENIOR GOVERNMENT PLEADER, SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO.13338/1998/K

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF COMMUNICATION DATED 19-9-94 ISSUED BY THE 4TH RESPONDENT.

EXT. P2: COPY OF COMMUNICATION DATED 24-9-94 ISSUED BY THE THEN HEADMISTRESS OF GLPS MAMANKARA.

EXT. P3: COPY OF ORDER NO.A7/30283/94 DATED 20-9-1994 OF THE 3RD RESPONDENT.

EXT. P4: COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER DATED 24-4-95 BEFORE THE 2ND RESPONDENT.

EXT. P5: COPY OF THE COVERING LETTER TO THE 3RD RESPONDENT FROM THE D.P.I. ON 30-5-95.

EXT. P6: COPY OF REPRESENTATION DATED 8-12-1994 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT. P7: COPY OF CHARGE MEMO DATED 25-1-1995 ISSUE DBY THE 3RD RESPONDENT.

EXT. P8: COPY OF REPRESENTATION DATED 9-2-95 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT. P9: COPY OF ORDER DATED 14-2-1995 OF THE 4TH RESPONDENT.

EXT. P10: COPY OF APPLICATION DATED 14-2-1995 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT. P11: COPY OF EXPLANATION DATED 7-4-1995 SUBMITTED BY THE PETITIONER TO THE 3RD RESPNODENT.

EXT. P12: COPY OF SHOW CAUSE NOTICE DATED 11-9-1995 ISSUED BY THE 3RD RESPONDENT.

EXT. P12(A): COPY OF ENQUIRY REPORT DATED 30-6-1995 -DO-

EXT. P13: COPY OF EXPLANATION DATED 6-10-95 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT. P14: COPY OF ORDER DATED 22-2-1996 PASSED BY THE 3RD RESPONDENT.

EXT. P15: COPY OF APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 12-4-1996.

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EXT. P16: COPY OF ORDER DATED 17-1-1997 OF THE 2ND RESPONDENT.

EXT. P17: COPY OF REVIEW PETITION DATED 12-2-1997 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT.

EXT. P18: COPY OF ORDER DATED 29-12-1997 OF THE GOVERNMENT.

EXT. P19: COPY OF THE COMMUNICATION NO.A7/30283/94 DATED 12.9.1994 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

EXT. P20: COPY OF THE LIST OF DOCUMENTS FILED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER.

EXT. P21: COPY OF THE LIST OF WITNESSES FILED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER.

EXT. P22: COPY OF THE INTERIM ORDER OF THIS HON'BLE IN O.P.12579/94 DATED 7.9.1994.

EXT. P23: COPY OF THE LETTER DATED 28.7.1994 ADDRESSED TO THE HEAD MASTER OF THE SCHOOL.

EXT. P24: COPY OF THE REPLY SENT BY THE PETITIONER THROUGH THE HEAD MISTRESS.

EXT. P25: COPY OF THE POSTAL ENVELOPE SHOWING THE DATES.

EXT. P26: COPY OF THE LETTER ISSUED BY THE DANCE TEACHER TO THE PETITIONER ME WITH RESPECT TO PAYMENT OF FEE.

EXT. P27: COPY OF THE REQUEST SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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O.P. No.13338 of 1998(K)

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Dated, this the 4th day of December, 2007

JUDGMENT

The petitioner while working as a PD Teacher in Government service was proceeded against indisciplinary proceedings which resulted in imposition of the punishment of removal from service. The petitioner took up the matter in appeal and the same having been rejected filed review petition before the Government, which was also dismissed. While challenging these orders on merits, the petitioner also raised a contention that by virtue of Rule 6 of the Kerala Public Service Commission (Consultation) Regulations 1957 read with Rule 15 (12) of the Kerala Government Service (Classification, Control & Appeal) Rules, before passing orders on the appeal filed by the petitioner, the Government was bound to consult the Public Service Commission in the matter. The petitioner submits that in view of sub regulation 6(1)(C) of the Kerala Public Service Commission (Consultation) Regulations requires the Government

was bound to refer the matter to the Commission for its opinion. The petitioner also relies in decision of a single judge of this Court in **KALIDAS V. STATE OF KERALA** (1988(2) KLT 613). The Government Pleader submits that only when the Government proposes to pass an order of imposing any of the punishment mentioned in Regulation 6 for the first time then alone the rule regarding consultation with the Commission would be applicable.

2. I am unable to accept the contention of the learned Government Pleader. Regulation 6(1) reads thus:

> "6. (1) It shall not be necessary for the Commission to be consulted on any disciplinary matter affecting a person serving in connection with the affairs of the State, except-
>
> (a) Where the Government propose to pass an original order imposing any of the following punishments namely:-
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> (i) reduction to a lower rank in the seniority list or to a lower post or time-scale, or to a lower stage in a time-scale;
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> (ii) recovery from pay of the whole or part of any pecuniary loss caused to the Government or to the Central Government or to a local authority by negligence or breach of orders;
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> (iii)compulsory retirement;
>
> (iv) removal from the civil service of the Government; or
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> (b) where the Government propose to pass an order in appeal or revision (or review) imposing any of the penalties referred to in sub-clause (a); or
>
> (c) where in an appeal or revision from (or review of) an order which has imposed any of the penalties referred to in sub-clause (a) Government propose to pass any order."

2. A reading of these provisions together, I am satisfied that since in this case the Government proposes to confirm the punishment of removal from service of the petitioner the Government was bound to consult the commission in accordance with Rule 6 of the Consultation Regulations. I am supported in this view by the decision in Kalidas's case(supra). In paragraph 8 of that decision it is held thus:

> **"Article 311(2) of the Constitution of India provenes that no civil servant shall be dismissed, removed or reduced in rank except after (a) conducting an inquiry, (b) in which he is informed about the charges against him and (c) is given a reasonable opportunity of being heard in respect of those charges. Rule 15 of the Classification, Control and Appeal Rules only work out the details of these constitutional requirements. The proviso added to the above sub article by the 42nd Amendment Act has the effect of explaining the scope of the terms "opportunity of being heard in respect of those charges'. That opportunity now consists only of effective participation in the inquiry. The delinquent officer has no further opportunity to make representation against the proposed penalty. The constitutional requirements therefore and that the delinquent employee must be informed of the charges and he shall be permitted to effectively participate in an inquiry into those charges. Those are the basic requirements of Rule 15 of the Classification, Control and Appeal Rules as well. The details of procedure are elaborated in Rule 15. Every such detail is a part of the reasonable opportunity which the Constitution guarantee to the civil servants. One such is the requirement of rule 15(12) of the Rule to consult the Public Service Commission. Non-compliance with any such procedural requirement renders the penalty order less and less efficacious. Ths (sic) effect of non-compliance with the basic requirements is to render the order invalid altogether. I have no doubt in my mind that the undeniable non-compliance with Rule 15 of the Classification, Control and Appeal Rules invalidates Ext.P6 order. Undeniable, because, neither in Ext.P6 or Ext. P9 order nor in the counter affidavit has any of the respondents a case that the charges were framed prior to the inquiry or that any inquiry was conducted after farming (sic) the charges. Added to that is the refusal to consult the Public Service Commission as enjoined by rule 15(12) of the Rules. I have, therefore, no hesitation to hold that Ext.P6 and Ext.P9 orders are invalid and liable to be set aside."**

3. The Regulation 6 read with rule 15 (12) of the Kerala Government Service (Classification, Control & Appeal) Rules gives an added protection given to the delinquents in the matter of imposition of punishment mentioned in Regulation 6 of the Consultation Regulations. Therefore before passing the impugned orders, the Government ought to have consulted the Public Service Commission. Accordingly, I quash Ext.P18 order and direct the Government to pass fresh orders after consultation with the Public Service Commission in accordance with Rule 15 (12) of the Kerala Government Service (Classification, Control & Appeal) Rules and Rule 6 of the Kerala Public Service Commission (Consultation) Regulations 1957.

The original petition is disposed of as above.

Sd/-
S.SIRI JAGAN,
JUDGE

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